LIBRARY
SUPREME COURT, U. S.

FILED
MAY 10 1968
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [redacted] 82

HIRAM W. MORRIS, JR.,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

RICHARD KANNER
Counsel for Petitioner
1150 N. W. 14th Street
Miami, Florida

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3080

IN THE

SUPREME COURT OF THE UNITED STATES

No. .....

HIRAM W. MORRIS, JR.,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

I.

Petitioner requests this Court to issue a writ of certiorari to the Florida District Court of Appeal, Fourth District, to review its separate unreported orders entered in case numbers 1340 and 1461 on March 8, 1968, certiorari denied by the Florida Supreme Court without opinion on April 20, 1968, case numbers 37204 and 37205. Jurisdiction is conferred upon this Court by Title 28, U.S.C., Sec. 1257.

II.

QUESTION OF LAW

Is it a denial of due process to dismiss petitioner's criminal appeal for lack of prosecution by petitioner's retained counsel, when no personal notice was given to petitioner of such intent, and when, upon notification of the dismissal, petitioner immediately retained new counsel and offered to proceed?

III.

STATEMENT OF FACTS

Petitioner's retained trial counsel filed notices of appeal from convictions arising in two separate unrelated cases. Petitioner subsequently retained new counsel to represent him on appeal, but unknown to petitioner, his appeals were not prosecuted, and upon motions of the Attorney General, both appeals were dismissed for lack of prosecution. Neither his trial counsel, who entered his appearance by virtue of the notice of appeal, nor his appellate counsel (who entered no appearance) advised petitioner of their withdrawal from the case, or of the state's motion to dismiss, nor was petitioner so advised by the Attorney General or the clerk of the District Court of Appeal.

Upon notification of the dismissal by his bondsman, petitioner immediately moved to substitute counsel and to reinstate his appeal. The factual allegations above were incorporated in his motion and sworn to (App. A1). The clerk of the court invited opposing affidavits from appellant's trial counsel and appeal counsel (App. A2), but none were filed.

The District Court denied the motion to reinstate the appeal (App. A3), and the Florida Supreme Court denied certiorari.

IV.

RECORD ON APPEAL

The following certified record accompanies, and is filed with, this petition.

1. The notice of appeal in case numbers 1340 and 1461.

2. The state's motion to dismiss the appeal in case numbers 1340 and 1461.

3. The order granting the motion to dismiss in case numbers 1340 and 1461.

4. The motion to recall mandate and reinstate the appeal filed in case numbers 1340 and 1461.

5. The letter from the clerk of the district court inviting opposing affidavits in case numbers 1340 and 1461.

6. Order denying the motion to reinstate appeal in case numbers 1340 and 1461.

V.

ARGUMENT

The constitutional right to an *effective* appeal has been recognized by this Court in cases culminating in *Anders* v. *California*, 386 U.S. 738 and *Entsminger* v. *Iowa*, 386 U.S. 748. For this Court to deny certiorari from the order denying petitioner's motion to reinstate his appeal would in effect sanction an anomalous situation where an indigent defendant would have greater protection than an affluent defendant.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

RICHARD KANNER
Counsel for Petitioner
1150 N. W. 14th Street
Miami, Florida